



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 28, 2022

IN THE MATTER OF:

Appeal Board No. 625257

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination, holding the claimant ineligible to receive benefits, effective March 30, 2020, through March 28, 2021, on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed August 3, 2022 (A.L.J. Case No.), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a correctional facility. Due to the pandemic, the claimant last worked on March 30, 2020. The claimant understood that his employment was essential and that he would resume work soon. The claimant attempted to open a claim for unemployment insurance benefits on April 6, 2020, via the internet, but was unsuccessful. The internet would freeze and/or log him off the system. He tried several times that day but was unable to complete an application for unemployment insurance benefits.

The claimant then tried a few days later, and again, had no success. The claimant telephoned the Department of Labor from April 13, through April 15,

2020, and got no response; the telephone line would just click. He even tried calling at midnight. The claimant was not pressed to file a claim for benefits because the Governor of New York had indicated that there was an influx of unemployment insurance claims and concomitant delays in the system; he also knew he would be working soon enough. He tried calling, at best, five more times, during the six-week period without success.

The claimant returned to work on or about May 18, 2020. He made no further effort to open a claim for unemployment insurance benefits. On September 8, 2021, the claimant opened a new claim for unemployment insurance benefits.

OPINION: The credible evidence establishes that the claimant did not file a claim for unemployment insurance benefits for the period from March 30, 2020, through May 17, 2020. A failure to register may be excused where the claimant received misinformation from the Department of Labor or where the claimant has been misled by the employer about the status of his or her employment. (Matter of Cardo, 190 AD2d 978 [3d Dept 1993]) There are no such contentions herein.

We do not dispute that in March 2020, the beginning of the pandemic, the claimant's attempts to open a claim were impeded by the significant influx of claimants and by the technological limitations of the Department of Labor. Yet, we find that the claimant, to his detriment, made only limited efforts in March and April 2020, to open a claim for unemployment insurance benefits. (See Appeal Board No. 565266 where the claimant's lack of persistence precluded backdating.) We find it significant that the claimant then abandoned his efforts when he resumed work in May 2020 and made no additional attempts until September 9, 2021. (See Appeal Board No. 621971 where the claimant abandoned all attempts for six-months.) Hence, we find that the limited efforts through April 2020, and the claimant's abandonment of his efforts until September 9, 2021, preclude a backdating of his unemployment insurance claim. Accordingly, we conclude that the claimant remains ineligible for unemployment insurance benefits for the period at issue.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, holding the claimant ineligible to receive benefits, effective March 30, 2020, through March 28, 2021, on the basis that the claimant did not comply with registration requirements, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER